Laws Pertaining to Montana's Conservation Districts

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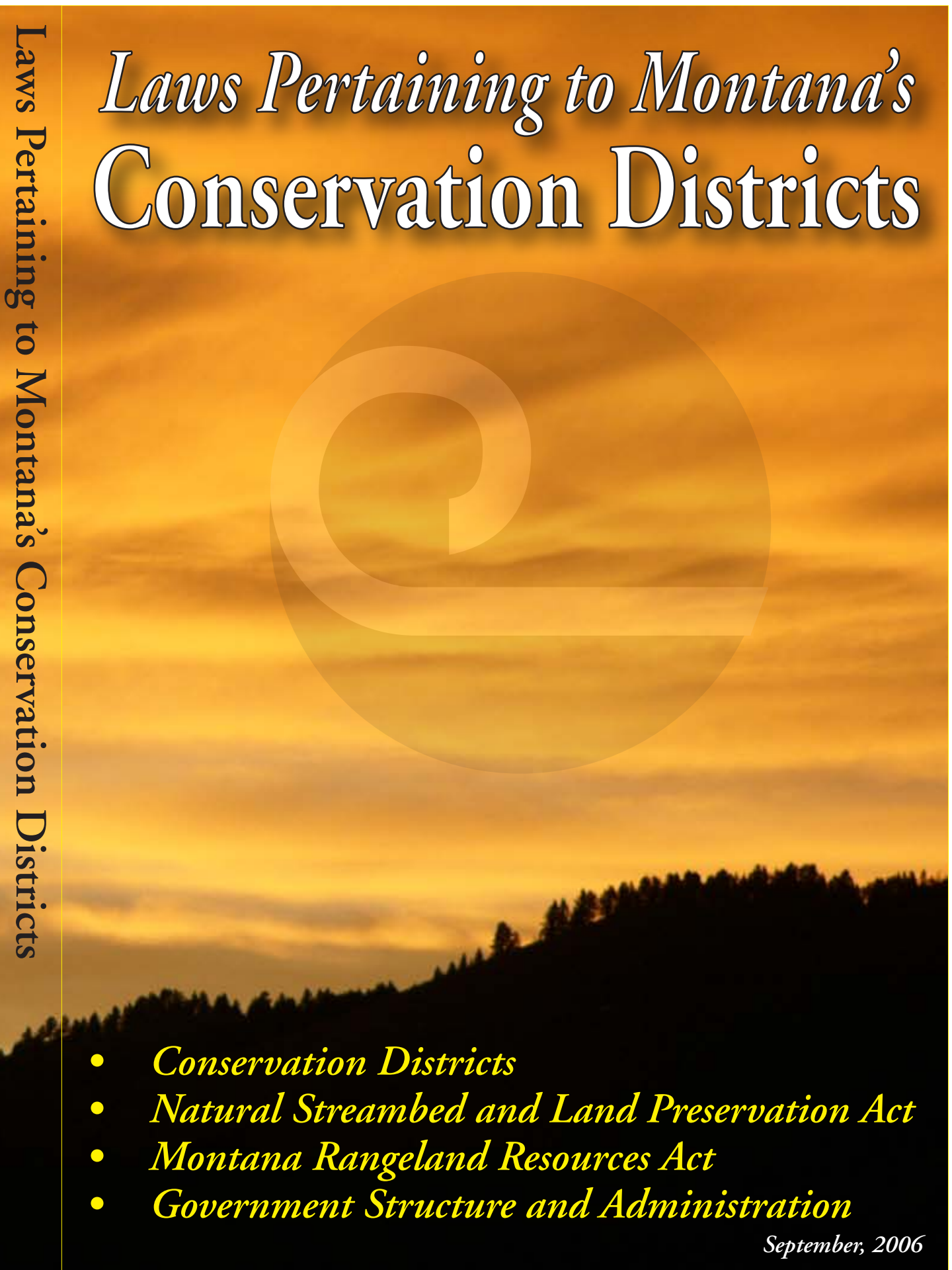

- *Conservation Districts*
- *Natural Streambed and Land Preservation Act*
- *Montana Rangeland Resources Act*
- *Government Structure and Administration*

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Preface

Montana's conservation districts are political subdivisions of state government, created by the legislature in 1939. A non-paid elected and appointed board of supervisors governs the activities of a conservation district. The 58 conservation districts in Montana are part of national network of over 3,000 conservation districts similarly organized in all 50 states.

Their main function is to conduct local activities to promote conservation of natural resources. The activities vary from district to district, but generally include education or on-the-the ground conservation projects. Conservation districts, however, have the authority to pass land use ordinances if necessary to conserve local natural resources. In addition, individuals planning to work in or near a perennial stream or river must first receive a permit from their local conservation district.

Funding for conservation district operations comes from their authority to levy a tax on real property within their district. For conservation projects and educational activities, conservation districts rely heavily on grants from state and federal governments.

The Natural Resource Conservation Service (NRCS) provides the majority of technical assistance for conservation district activities and the two entities usually share office space when their offices are located in the same towns.

The Department of Natural Resources and Conservation is required by law to provide the conservation districts with administrative, technical, financial and legal assistance.

This book is a compilation of laws pertaining to conservation districts. It may not be all-inclusive, as other laws may apply in certain circumstances.

For additional information about the Department or conservation district programs, visit our website: www.dnrc.mt.gov/cardd

Other publications available on our website:

- ***A Guide to Stream Permitting in Montana***
- ***Natural Streambed and Land Preservation Act – the Law, Administrative Rules, and AG Opinions***
- ***Montana Stream Permitting: A Guide for CD Supervisors and Others***
- ***Montana Grazing BMPs***
- ***Tips for Small Acreage Landowners***
- ***Montana Riparian Grazing Successes***

Forms available on our website:

Natural Streambed and Land Preservation Act

- Joint Application for Work on/or Near Streams (Form 270)
- Team Member Report (Form 272)
- Board's Decision (Form 273)
- Official Complaint (Form 274)

Grants and Loans

- 223 Grant Application and guidelines- Form (Revised 91)
- Rangeland Improvement Loan Application and Guidelines
- Education Mini Grants
- Watershed Planning Assistance
- Conservation District Administrative Grants

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LAND RESOURCES AND USE

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Part 1
General Provisions

Chapter Cross-References
Montana Environmental Policy Act, Title 75, ch. 1.
Conservation easements, Title 76, ch. 6, part 2.

76-15-101. Legislative determinations. It is hereby declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) that the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other prop-

erty from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "District" or "conservation district" means a governmental subdivision of

this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter.

(4) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area. The posting must include, when possible, posting at public places where it is customary to post notices concerning county or municipal affairs generally.

(5) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(6) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(7) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(8) "Qualified elector" means an elector as defined in Title 13.

(9) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(10)"United States" or "agencies of the United States" includes the United States of America, the natural resource conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979; amd. Sec. 269, Ch. 418, L. 1995.

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;
(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;
(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and
(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2
Creation of Conservation Districts

76-15-201. Petition to create conservation district.
(1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the department approve the organization of a conservation district to function in the territory described in the petition.
(2) The petition must set forth:
(a) the proposed name of the district;
(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;
(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but is sufficient if generally accurate;
(d) a request that:
(i) the department define the boundaries for the district;
(ii) a referendum be held within the territory defined on the question of the creation of a conservation district in the territory; and
(iii) the department determine that a district be created.
(3) Where more than one petition is filed covering parts of the same territory, the department may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2); amd. Sec. 1, Ch. 76, L. 1985; amd. Sec. 270, Ch. 418, L. 1995.

76-15-202. Hearing on petition.
(1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department

upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Cross-References
Applicability of Montana Administrative Procedure Act, 2-4-107.

76-15-203. Hearing procedure if additional territory to be included. If it appears to the department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the department shall adjourn the hearing and shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district. The further hearing must be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 271, Ch. 418, L. 1995.

76-15-204. Determination of need for district.

(1) After the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made on the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 272, Ch. 418, L. 1995.

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the department shall consider the topography of the area considered and of the state, the composition of soils in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 273, Ch. 418, L. 1995.

76-15-206. Determination of administrative practicability of district. After the department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 274, Ch. 418, L. 1995.

76-15-207. Referendum on question of creating district.

(1) To assist the department in the determination of administrative practicability and feasibility, the department shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot must set forth the boundaries of the proposed district as determined by the department.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 275, Ch. 418, L. 1995.

76-15-208. Administration of hearings and referenda.

(1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Procedure following referendum.

(1) The department shall publish the result of the referendum, and shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner provided in this chapter.

(3) If the department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken on the petitions in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 276, Ch. 418, L. 1995.

76-15-210. Criteria for determining administrative practicability.

(1) In making its determination, the department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the

votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 277, Ch. 418, L. 1995.

76-15-211. Appointment of supervisors. If the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided in this part, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 278, Ch. 418, L. 1995.

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which must set forth:
   (a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the department has appointed them as supervisors;
   (b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;
   (c) the term of office of each of the supervisors;
   (d) the name which is proposed for the district; and
   (e) the location of the principal offices of the supervisors of the district.

(2) The application must be subscribed and sworn to by each of the supervisors.

(3) (a) The application must be accompanied by a statement by the department which shall certify that:
(i) a petition was filed, notice issued, and hearing held as provided in this part;
(ii) the department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries of the district;
(iii) notice was given and a referendum held on the question of the creation of the district; and
(iv) the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that the department determined that the operation of the proposed district is administratively practicable and feasible.
(b) The statement must also set forth the boundaries of the district as they have been defined by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 279, Ch. 418, L. 1995.

76-15-213. Processing of application by secretary of state.
(1) The secretary of state shall examine the application and statement, and if the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the secretary of state's office.
(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall certify that fact to the department. The department shall submit to the secretary of state a new name for the district which is not subject to the defects. Upon receipt of the new name free of defects, the secretary of state shall record the application and statement with the modified name in an appropriate book of record in the secretary of state's office.
(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 280, Ch. 418, L. 1995.

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district must include the territory as determined by the department, but may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 281, Ch. 418, L. 1995.

Cross-References
Combination or division of districts, 76-15-803.

Part 3
Administration of Conservation Districts

76-15-301. Establishment and reorganization of supervisor areas.
(1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.
(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be

elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the department may reorganize the district into seven supervisor areas.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12); (2)En. Sec. 1, Ch. 173, L. 1983; amd. Sec. 1, Ch. 473, L. 1983; amd. Sec. 2, Ch. 76, L. 1985; amd. Sec. 282, Ch. 418, L. 1995.

76-15-302. Nominations for supervisor.

(1) Within 30 days after the date of issuance of a certificate of organization of a conservation district by the secretary of state, nominating petitions may be filed with the registrar, as defined in Title 13, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor.

(2) If more than twice the number of candidates are nominated than the number to be elected at the general election, the registrar shall give due notice of a nominating election to be held for the selection of candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 3, Ch. 76, L. 1985.

76-15-303. General election — election by acclamation — appointment.

(1) All qualified electors within the district are eligible to vote in the election.

(2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated must be arranged on ballots as prescribed in 13-12-205.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The ballots must be delivered to the election judges in those precincts that contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

(5) (a) Except as provided in subsection (5)(b), if the number of candidates

nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate has filed a nominating petition for the position, the governing body shall make an appointment to fill the position. Supervisors taking office pursuant to this subsection serve a term as if elected to the position.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979; amd. Sec. 4, Ch. 76, L. 1985; amd. Sec. 2, Ch. 576, L. 1985; amd. Sec. 1, Ch. 184, L. 1995; amd. Sec. 10, Ch. 254, L. 1999; amd. Sec. 90, Ch. 414, L. 2003.

76-15-304. Election of supervisors.

(1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2).

76-15-305. Transition to seven supervisors.

(1) At the time of reorganization under 76-15-301(2), the department shall appoint:
   (a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and
   (b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors.

History: En. Sec. 2, Ch. 173, L. 1983; amd. Sec. 283, Ch. 418, L. 1995.

76-15-306 through 76-15-310 reserved.

76-15-311. Governing body of district.

(1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(3) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979; amd. Sec. 3, Ch. 173, L. 1983; amd. Sec. 2, Ch. 473, L. 1983.

76-15-312. Term of office and vacancies.

(1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
(c) resignation;
(d) removal from office;
(e) unexcused absence from three consecutive regular meetings of the board of supervisors;
(f) ceasing to be a resident of the district;
(g) conviction of a felony or a violation of official duties; or
(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 1, Ch. 223, L. 1989.

76-15-313. Operation of supervisors.

(1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for his services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. However, no supervisor may receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979; amd. Sec. 3, Ch. 473, L. 1983.

76-15-314. Removal of a supervisor. A supervisor may be removed by the department and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 223, L. 1989; amd. Sec. 284, Ch. 418, L. 1995.

76-15-315. Administrative functions of the supervisors.

(1) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper.

(3) The supervisors shall furnish to the department copies of such ordinances, rules, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part).

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance.

(1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for the legal services they may require, or they may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979; amd. Sec. 4, Ch. 473, L. 1983; amd. Sec. 285, Ch. 418, L. 1995.

Cross-References

County Attorney to act as counsel for district, 7-4-2711.

76-15-320. Legal status of district — immunity.

(1) A conservation district and the supervisors of a conservation district may:
   (a) sue and be sued in the name of the district;
   (b) satisfy a judgment or settlement pursuant to 2-9-316;
   (c) have a seal that is judicially noticed;
   (d) have perpetual succession unless terminated as provided in this chapter;
   (e) implement Title 75, chapter 7, part 1; and
   (f) make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) A conservation district, conservation district supervisor, or conservation district employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities pursuant to Title 75, chapter 7, part 1, or this chapter, unless the act or omission constitutes gross negligence, was committed in bad faith, or was committed with malicious purpose.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 2, Ch. 23, L. 1999.

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

Cross-References
Applicability of Montana Administrative Procedure Act, Title 2, ch. 4.

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Copies of notice transmitted to county commissioners. Within 30 days after receipt of such notice, the county clerk and recorder shall transmit a copy of the same to the board of county commissioners, who shall determine whether the district has been lawfully organized.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

Part 4
Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation.
(1) A conservation district and the supervisors thereof shall have the power to:
   (a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;
   (b) publish the results of such surveys, investigations, or research; and
   (c) disseminate information concerning such preventive and control measures and works of improvement.
(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors of the conservation district may:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water, including but not limited to engineering operations, range management, methods of cultivation, growing vegetation, changes in use of land, and the measures listed in 76-15-101(3) on:
   (a) lands within the district and owned or controlled by the state with the cooperation of the agency administering and having jurisdiction of the lands; or
   (b) any other lands within the district upon obtaining the consent of the occupier of the lands or the necessary rights or interests in the lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any governmental or other agency or any occupier of lands within the district, subject to any conditions that the supervisors consider necessary to advance the purposes of this chapter, to conduct or complete:
   (a) erosion control and prevention operations; and
   (b) works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district;

(4) construct, improve, operate, and maintain any structures that are necessary

or convenient for the performance of any of the operations authorized in this chapter;

(5) purchase, lease, or otherwise take over and administer projects undertaken by the United States or the state within the district boundaries for:
   (a) soil conservation;
   (b) flood prevention;
   (c) drainage;
   (d) irrigation;
   (e) water management;
   (f) erosion control; or
   (g) erosion prevention;

(6) manage, as agent of the United States or of the state any of the types of projects identified in subsection (5) within its boundaries;

(7) act as agent for the United States or for the state in connection with the acquisition, construction, operation, or administration of any of the types of projects identified in subsection (5) within its boundaries;

(8) accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States, from the state, or from any other source and use or expend funds or other contributions to conduct its operations;

(9) execute its duties and responsibilities under Title 75, chapter 7, part 1, pursuant to the procedures of this chapter; or

(10) execute projects for the conservation, development, storage, distribution, and utilization of water, including but not limited to projects for the following purposes:
   (a) irrigation;
   (b) flood prevention;
   (c) drainage;
   (d) fish and wildlife;
   (e) recreation;
   (f) development of power; or
   (g) supplying water for fire protection, livestock, or public, domestic, industrial, or other uses.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9); amd. Sec. 3, Ch. 23, L. 1999.

76-15-404. Acquisition and management of property.

(1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance

of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).

76-15-407. Selection and acquisition of water storage sites.

(1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119; amd. Sec. 286, Ch. 418, L. 1995.

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.

76-15-410. Disposition of excess water.

(1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5
Financial Aspects of Conservation Districts Loan Program

76-15-501. Financial management. A conservation district and the supervisors of the conservation district may:

(1) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness;

(2) refund or retire an indebtedness or lien against the district or property of the district;

(3) establish and collect rates, fees, tolls, rents, or other charges for the use of facilities or for services or materials provided. Revenue from these sources may be expended in carrying out the purposes and provisions of this chapter.

(4) subject to 15-10-420, levy taxes as provided in this part to pay any obligation of the district and to accomplish the purposes of this chapter as provided in this chapter;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part; or

(7) apply for, accept, administer, and expend funds, grants, and loans from the state or federal government or any other source.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15); amd. Sec. 18, Ch. 473, L. 1983; amd. Sec. 4, Ch. 23, L. 1999; amd. Sec. 146, Ch. 584, L. 1999.

76-15-502. Allocation of state funds among districts.

(1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part); amd. Sec. 5, Ch. 473, L. 1983; amd. Sec. 5, Ch. 76, L. 1985.

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Repealed. Sec. 8, Ch. 76, L. 1985.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations.

(1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works in the district, the board of supervisors may:
   (a) borrow additional funds needed in an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the funds; or
   (b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) Subject to 15-10-420, the board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants may not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220; amd. Sec. 287, Ch. 418, L. 1995; amd. Sec. 196, Ch. 574, L. 2001.

76-15-506. Bonds authorized — election.

(1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. If from the returns of the election it appears that the majority of votes cast at such election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of such bonds.

(3) The authorization of such undertaking, the form, and content shall be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501(2) and (3),

and 7-7-4502 through 7-7-4505.

(4) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a debt service fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such debt service fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221; amd. Sec. 28, Ch. 298, L. 1983.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222; amd. Sec. 1, Ch. 135, L. 1991.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206; amd. Sec. 19, Ch. 473, L. 1983.

76-15-513. Division between counties of money to be raised by regular and special assessment.

(1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Maximum regular assessment. Except as provided in 76-15-531 and 76-15-532, the regular assessment in any one year may not exceed 1 1/2 mills on the dollar of total taxable valuation of real property within the district. The valuation must be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208; amd. Sec. 6, Ch. 473, L. 1983; amd. Sec. 3, Ch. 573, L. 1993.

76-15-516. Levy of regular and special assessments.

(1) Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of 15-10-420, 76-15-531, and 76-15-532, the board of county commissioners of each county in which any portion of the district

lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) Subject to 15-10-420, the board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment on the taxable value of all taxable property located within the project area. The levy must be known as ".... (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209; amd. Sec. 7, Ch. 473, L. 1983; amd. Sec. 4, Ch. 573, L. 1993; amd. Sec. 147, Ch. 584, L. 1999; amd. Sec. 197, Ch. 574, L. 2001.

76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210; amd. Sec. 8, Ch. 473, L. 1983.

76-15-518. Certification of assessment to department of revenue — entry on property tax record. Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in part 6 or this part. The assessment must be certified to the department of revenue and entered on the property tax record of each county.

History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211; amd. Sec. 139, Ch. 27, Sp. L. November 1993; amd. Sec. 148, Ch. 584, L. 1999.

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References
County taxation, Title 7, ch. 6, part 25.

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References
Official bonds of county officers, 7-4-2212.

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215; amd. Sec. 9, Ch. 473, L. 1983.

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and for conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and collected on deposits or investments under a conservation practice loan program and place the same to the credit of the district. The treasurer is responsible for the official bond and for its safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by the treasurer.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216; amd. Sec. 20, Ch. 473, L. 1983; amd. Sec. 1, Ch. 141, L. 1997.

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since his last report. Such report shall be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219; amd. Sec. 21, Ch. 473, L. 1983; amd. Sec. 5, Ch. 573, L. 1993.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

Cross-References
Liens, Title 71, ch. 3.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

76-15-530. Conservation district appropriations — administration.

(1) The state treasurer shall draw warrants payable from appropriations of allocations authorized as provided under 15-35-108 on order from the department.

(2) The department shall administer the conservation district appropriations referred to in subsection (1). The money must be distributed to the conservation districts on the basis of need. A conservation district may submit an application to the department for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: En. Sec. 2, Ch. 479, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 288, Ch. 418, L. 1995; amd. Sec. 67, Ch. 509, L. 1995.

76-15-531. Special administrative assessment permitted — voter approval.

(1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment for administrative costs and expenses of the district if the qualified electors of the district approve the imposition of the additional assessment at an election held as provided in 15-10-425.

(b) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used.

History: En. Sec. 1, Ch. 573, L. 1993; amd. Sec. 32, Ch. 495, L. 2001; amd. Sec. 198, Ch. 574, L. 2001.

76-15-532. Limitations — reduction or repeal of special administrative assessment.

(1) In each year following the approval of the special administrative assessment as provided in 76-15-531, the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.

(2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.

(3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

History: En. Sec. 2, Ch. 573, L. 1993.

76-15-533 through 76-15-540 reserved.

76-15-541. Conservation practice loan program — definition.

(1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States natural resources conservation service.

History: En. Sec. 11, Ch. 473, L. 1983; amd. Sec. 281, Ch. 42, L. 1997.

76-15-542. Conservation practice loan account.

(1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal, interest, if any, and administrative fees or charges for loans must be deposited in the conser-

vation practice loan account. Interest earned from deposits or investment of funds must be credited to the conservation practice loan account unless the district directs the county treasurer to deposit the interest earned into the conservation district general operating account.

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program. Interest paid and collected on the deposits or investments of a conservation practice loan account may be used for the general operations of a conservation district.

History: En. Sec. 12, Ch. 473, L. 1983; amd. Sec. 2, Ch. 141, L. 1997.

76-15-543. Application for loan.

(1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.

(2) The application must include a conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 13, Ch. 473, L. 1983; amd. Sec. 282, Ch. 42, L. 1997.

76-15-544. Eligibility for loan. A district may award a loan to a land occupier to finance a conservation practice only if a majority of the district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

(1) the conservation practice will be economically feasible;

(2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and

(4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

History: En. Sec. 14, Ch. 473, L. 1983.

76-15-545. Criteria for evaluation of loan applicants — preferences.

(1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under 76-15-544:

(a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;

(b) the feasibility and practicality of the project;
(c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;
(d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and
(e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.

(2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:
(a) applicants who have not previously received a conservation practice loan; and
(b) applications for a group or cooperative conservation practice.

History: En. Sec. 15, Ch. 473, L. 1983.

76-15-546. Terms and conditions of loan. A conservation practice loan is subject to the following terms and conditions:
(1) The district shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.
(2) The term of the loan may not be greater than the life of the project and may not exceed 30 years.
(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.
(4) A conservation practice must be completed according to United States natural resources conservation service standards and specifications, if applicable.

History: En. Sec. 16, Ch. 473, L. 1983; amd. Sec. 283, Ch. 42, L. 1997; amd. Sec. 3, Ch. 141, L. 1997.

76-15-547. Rules for loan program. The district shall adopt rules:
(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;
(2) governing the application of the criteria and preferences for awarding loans;
(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;
(4) providing for the confidentiality of financial statements submitted;
(5) prescribing the conditions for making loans;
(6) establishing the interest rate, if any, for the loans; and
(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

History: En. Sec. 17, Ch. 473, L. 1983; amd. Sec. 4, Ch. 141, L. 1997.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

Part 6
Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part).

76-15-605. Board decision.

(1) The report of 76-15-603 shall be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area shall be created.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979.

76-15-606. Election procedure.

(1) The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of the project area.

(2) No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which he proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected.

(1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area.

(1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-622. Financing of project area expenses.

(1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-623. Administration of special assessment.

(1) Subject to 15-10-420, when the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of the county in which there lies any portion of a project area may annually at the time of levying county taxes levy a special assessment on the taxable value of all taxable property in the project area. The levy must be known as the "…. (name of district) soil and water conservation district special assessment" and must be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable value bears to the total taxable value of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part); amd. Sec. 149, Ch. 584, L. 1999; amd. Sec. 199, Ch. 574, L. 2001.

76-15-624. Disposition of funds — insufficient revenue.

(1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7
Land Use Regulations

76-15-701. Adoption of land use regulations.
(1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.
(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Cross-References
Cooperation with state agencies, 76-15-317.

76-15-702. Referendum on proposed land use regulations.
(1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.
(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against

approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations.

(1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations.

(1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:
   (a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;
   (b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;
   (c) specifications of cropping and range programs and tillage and grazing practices to be observed;
   (d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;
   (e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion, threatened or existing, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

1) setting forth:
   (a) the adoption of the ordinance prescribing land use regulations;
   (b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and
   (c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:
   (a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and
   (b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).

76-15-710. Court procedure after petition is filed.

(1) Upon the presentation of such petition, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefore with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5); amd. Sec. 6, Ch. 76, L. 1985.

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment.

(1) When the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.
(2) The board of adjustment consists of three members, each to be appointed for a term of 3 years, except that the members first appointed must be appointed for terms of 1, 2, and 3 years, respectively.
(3) The members of each board of adjustment must be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established. The members may be removed by the department, upon notice and hearing, only for neglect of duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of the district. Employees of the department and the supervisors of the district are ineligible to appointment as members of the board of adjustment.
(4) Vacancies in the board of adjustment must be filled in the same manner as original appointments and are for the unexpired term of the member whose term becomes vacant.
(5) The members of the board of adjustment receive compensation for their services at the rate of $25 a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the presiding officer of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1); amd. Sec. 7, Ch. 76, L. 1985; amd. Sec. 289, Ch. 418, L. 1995.

76-15-722. Operation of board of adjustment.

(1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979.

76-15-723. Petition for a variance.

(1) Any qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-724. Hearing on petition for a variance.

(1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision.

(1) If, upon the facts presented at the hearing, the board of adjustment determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:
   (a) will relieve the great practical difficulties or unnecessary hardship;
   (b) will not be contrary to the public interest; and
   (c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979; amd. Sec. 290, Ch. 418, L. 1995.

76-15-726. Appeal to district court from board decision.

(1) A petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board of adjustment be modified or set aside.

(2) A copy of the petition must immediately be served upon the parties to the hearing before the board of adjustment, and after service the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board of adjustment.
History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 291, Ch. 418, L. 1995.

76-15-727. Court proceedings.

(1) Upon the filing, the court shall cause notice of the filing to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined in the proceedings, may grant temporary relief as it considers just and proper, and make and enter a decree enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order of the board of adjustment.

(2) A contention that is not urged before the board of adjustment may not be considered by the court unless the failure or neglect to urge the contention is

excused because of extraordinary circumstances. The findings of the board of adjustment as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board of adjustment, the court may order the additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); *amd. Sec. 292, Ch. 418, L. 1995.*

Part 8
Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be

in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts.

(1) A petition may be filed with the department for the division of any district, for the combination of any two or more districts, or for the division of a district and the combination of any divided part of a district with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition must be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. When a petition is filed, the department shall within 30 days give notice of a public hearing on the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the department shall determine from the hearing record whether the proposed division, the combination, or the division and combination of territory is administratively practicable and feasible. In making the determination, the department shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the department determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the department shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the department shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) When a district is divided, the supervisors of the district shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion in the district, and other relevant factors. A statement of the allocation must be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. If the supervisors fail to make or to

agree upon the allocation, the division must be made by the department after a hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4); amd. Sec. 293, Ch. 418, L. 1995.

76-15-804. Petition to discontinue all or part of district.

(1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department requesting the termination of the operations of the district or a part of the district and the discontinuance of the existence of the district or that part of the district.

(2) The department may conduct public meetings and public hearings upon the petition that are necessary to assist it in the consideration of the petition.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1); amd. Sec. 10, Ch. 473, L. 1983; amd. Sec. 294, Ch. 418, L. 1995.

76-15-805. Referendum on question of discontinuance.

(1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Decision in case of petition for discontinuance of entire district.

(1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a); amd. Sec. 295, Ch. 418, L. 1995.

76-15-807. Decision in case of petition for discontinuance of portion of district.

(1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b); amd. Sec. 296, Ch. 418, L. 1995.

76-15-808. Criteria for decision on discontinuance.

(1) In making the determination, the department shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the continued operation of the district or part of the district is administratively practicable and feasible

unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4); amd. Sec. 297, Ch. 418, L. 1995.

76-15-809. Procedure to terminate district.

(1) Upon certification of the department that the department has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay the proceeds of the sale into the state treasury.

(3) The supervisors shall file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the department, setting forth the determination of the department that the continued operation of the district or part of the district is not administratively practicable and feasible. The application must state that the property of the district or part of the district has been disposed of and the proceeds paid to the treasury as provided in 76-15-804 through 76-15-810 and must set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5); amd. Sec. 298, Ch. 418, L. 1995.

76-15-810. Effect of termination.

(1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under

those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

Part 9
Coal Bed Methane Protection Program

76-15-901. Short title. This part may be cited as the "Coal Bed Methane Protection Act".

History: En. Sec. 1, Ch. 531, L. 2001.

76-15-902. Legislative findings and declaration of purpose.

(1) The legislature finds that the need for an economical supply of clean-burning energy is a national and state priority.

(2) The legislature further finds that Montana possesses plentiful reserves of clean-burning natural gas contained in coal beds.

(3) The legislature further finds that the extraction of natural gas from coal beds may result in unanticipated adverse impacts to land and to water quality and availability.

(4) The legislature declares that there is a compelling public need to promote efforts that preserve the environment and protect the right to use and enjoy private property. The legislature further declares that the purpose of this part is to establish a long-term coal bed methane protection account and a coal bed methane protection program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells.

(5) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators that own, develop, or operate coal bed methane wells and collection systems of their legal obligation to compensate landowners and water right holders for damages caused by the development of coal bed methane.

(6) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators from:
   (a) any liability associated with the exploration or development of coal bed methane; or
   (b) the responsibility to comply with any applicable provision of Titles 75, 82, and 85 and any other provision of law applicable to the protection of natural resources or the environment.

History: En. Sec. 2, Ch. 531, L. 2001.

76-15-903. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural production" means the production of:
   (a) any growing grass, crops, or trees attached to the surface of the land; or
   (b) farm animals with commercial value.

(2) "Coal bed methane developer or operator" means the person who acquires a lease for the purpose of extracting natural gas from a coal bed.

(3) "Department" means the department of natural resources and conservation as provided for in Title 2, chapter 15, part 33.

(4) "Emergency" means the loss of a water supply that must be replaced immediately to avoid substantial damage to a landowner or a water right holder.

History: En. Sec. 3, Ch. 531, L. 2001.

76-15-904. Coal bed methane protection account — use.

(1) There is a coal bed methane protection account in the state special revenue fund.

(2) There must be deposited in the account the proceeds from the distribution of oil and natural gas production taxes, as provided in 15-36-331.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of subsection (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(6) Money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)

History: En. Sec. 4, Ch. 531, L. 2001; amd. Sec. 12, Ch. 522, L. 2003.

76-15-905. Coal bed methane protection program — restrictions.

(1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.

(2) A conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or

water right holder. The procedures must include:

(a) a method for submitting an application for compensation for damages caused by coal bed methane development;

(b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;

(c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and

(d) criteria for ranking applications related to available resources.

(3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:

(a) a loss of agricultural production or a loss in the value of land;

(b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or

(c) the contamination of surface water or ground water that prevents its beneficial use.

(4) (a) Subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.

(b) Subject to the conditions of subsections (5) through (8), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water.

(5) In order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.

(6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed $50,000.

(7) Conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account.

(8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.

(b) Compensation for an emergency may be made after June 30, 2005.

History: En. Sec. 5, Ch. 531, L. 2001.

TITLE 76
LAND RESOURCES AND USE

CHAPTER 1
PLANNING BOARDS

Part 2 -- Membership

Chapter Cross-References

Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Agricultural appraisal, Title 15, ch. 7, part 2.
Planning functions of Department of Commerce, 90-1-102, 90-1-103.

Part 2
Membership

76-1-201. Membership of city-county planning board.

(1) Except as provided in subsection (2), a city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of the board of supervisors of a conservation district provided for in 76-15-311.

(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985.

76-1-202. Qualifications of citizen members of city-county planning board.

(1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards.

(1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board.

(1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board.

(1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board.

(1) A city planning board shall consist of not less than seven members to be appointed as follows:
   (a) one member to be appointed by the city council from its membership;
   (b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;
   (c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;
   (d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board.

(1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.

76-1-223. County representative for city planning board. When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor

may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979; amd. Sec. 1, Ch. 269, L. 2003.

76-1-224. Citizen members of city planning board.

(1) The citizen members shall:
   (a) be qualified by knowledge and experience in matters pertaining to the development of the city; and
   (b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

TITLE 75
ENVIRONMENTAL PROTECTION

CHAPTER 7
AQUATIC ECOSYSTEM PROTECTION

Part 1 -- Streambeds

Chapter Cross-References
Wetlands Protection Advisory Council, 2-15-3405.
Smith River Management Act, Title 23, ch. 2, part 4.

Part Cross-References
Ferrykeepers to keep banks of streams at landings in good repair, 7-14-2826.
Fish, Wildlife, and Parks Commission to adopt rules for protection of streams from adverse recreational use, 23-2-302.
Construction of pipelines across streams, 69-13-103.
Construction of railroads across streams, 69-14-532.
Watercourses — accretion and reclamation of banks, Title 70, ch. 18, part 2.
Failure to issue mining permit — protection of streambeds, Title 82, ch. 4, part 2.
Metal mine reclamation, Title 82, ch. 4, part 3.
Water conservancy districts — flow regulation, 85-9-102.

Fishing access sites and frontages — funds for recreational use, 87-1-605.
Stream protection of fish and wildlife resources — plans for construction or hydraulic projects, Title 87, ch. 5, part 5.

Part 1
Streambeds

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Intent — policy.
(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.
(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511; amd. Sec. 11, Ch. 361, L. 2003.

Cross-References
Water rights, Art. IX, sec. 3, Mont. Const.
Beneficial use defined, 85-2-102.
Adjudication of water rights, Title 85, ch. 2, part 2.
Policy for protection of fish and wildlife resources in streams, 87-5-501.

75-7-103. Definitions. As used in this part, the following definitions apply:
(1) "Applicant" means any person presenting notice of a project to the supervisors.
(2) "Department" means the Montana department of fish, wildlife, and parks.
(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;
(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or
(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.
(b) Project does not include:
(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102; or
(iii) livestock grazing activities.

(6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 551, L. 1987; amd. Sec. 1, Ch. 426, L. 1995; amd. Sec. 1, Ch. 447, L. 2003.

Cross-References
Composition of Board of County Commissioners, 7-4-2101.
Conservation district supervisors, Title 76, ch. 15.
Grass Conservation Act, Title 76, ch. 16.

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

Cross-References
Existing water rights protected, Art. IX, sec. 3, Mont. Const.

75-7-105. Application of flood plain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated flood plains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty.
(1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.
(2) A person who violates subsection (1) is subject to penalties as provided in 75-7-123.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part); amd. Sec. 2, Ch. 426, L. 1995.

Cross-References
Ordinary high-water mark defined, 23-2-301.
Venue for action arising on stream, 25-2-124.
Execution of criminal fine, 46-19-102.
Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project.
(1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.
(2) The notice must include the location, general description, and preliminary plan of the project.
(3) At the time of filing a notice of the proposed project under subsection (1), the applicant may sign an arbitration agreement as provided in 75-7-117.
(4) The district may authorize a representative to accept notices of proposed projects.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513; amd. Sec. 3, Ch. 426, L. 1995; amd. Sec. 1, Ch. 581, L. 2003.

Cross-References
Removal of obstructions caused by beaver and beaver dams, 87-1-224.

75-7-112. Procedure for considering projects — team.

(1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(5) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.

(b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of the 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the

time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514; amd. Sec. 4, Ch. 426, L. 1995; amd. Sec. 2, Ch. 581, L. 2003.

75-7-113. Emergencies — procedure.

(1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;
(c) the date on which the action was taken; and
(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) (a) When a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);
(b) failure to submit a notice of the project under subsection (7); or
(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517; amd. Sec. 5, Ch. 426, L. 1995; amd. Sec. 3, Ch. 581, L. 2003.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1); amd. Sec. 6, Ch. 426, L. 1995.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

75-7-116. Modification of plan — assignment of costs.
(1) If the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.
(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518; amd. Sec. 4, Ch. 581, L. 2003.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.

75-7-117. Rules — minimum standards — arbitration agreement.
(1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.
(2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and

exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an applicant chooses to use arbitration. The arbitration agreement must contain provisions for:
   (a) the appointment of arbitrators;
   (b) the exercise of power by the arbitrators;
   (c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and
   (d) the fees and expenses of arbitration.

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975; R.C.M. 1947, 26-1520; amd. Sec. 2, Ch. 551, L. 1987; amd. Sec. 189, Ch. 418, L. 1995; amd. Sec. 7, Ch. 426, L. 1995; amd. Sec. 5, Ch. 581, L. 2003.

Cross-References
Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4.

75-7-118 through 75-7-120 reserved.

75-7-121. Review.

(1) Any review of final action by the supervisors under 75-7-112 or 75-7-113 may be by arbitration or by the district court of the county where the project is located. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur.

(2) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521; amd. Sec. 8, Ch. 426, L. 1995; amd. Sec. 12, Ch. 361, L. 2003; amd. Sec. 6, Ch. 581, L. 2003.

Cross-References
Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
District Courts, Title 3, ch. 5.
Venue for action arising on stream, 25-2-124.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522; amd. Sec. 9, Ch. 426, L. 1995.

Cross-References

Obstruction of rivers and streams as nuisance, 27-30-101.
Action to abate public nuisance, 27-30-202.
Criminal code — public nuisance, 45-8-111.

75-7-123. Penalties — restoration.

(1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:
   (a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500; or
   (b) subject to a civil penalty not to exceed $500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition to a fine or a civil penalty under subsection (1), the person:
   (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or
   (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed $7,000. If the amount of liability for restoration exceeds $7,000, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1); amd. Sec. 1, Ch. 255, L. 1993; amd. Sec. 10, Ch. 426, L. 1995; amd. Sec. 3, Ch. 470, L. 2003.

Cross-References

Venue for action arising on stream, 25-2-124.
Execution of criminal fine, 46-19-102.
Restoration of damaged streams, 87-5-509.

75-7-124. Repealed. Sec. 4, Ch. 470, L. 2003.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

75-7-125. Jurisdiction — declaratory ruling — standards — judicial review.
(1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.
(b) The supervisors' determination pursuant to subsection (1)(a) must be made, in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).
(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.
(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.
(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.
(3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.
(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:
(a) in violation of constitutional or statutory provisions;
(b) in excess of the statutory authority of the supervisors;
(c) affected by error of law; or
(d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.
(5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.
(6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the

supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

History: En. Sec. 1, Ch. 288, L. 2003.

Cross-References

Furnishing of medical assistance — discrimination prohibited, 53-6-105.

TITLE 76
LAND RESOURCES AND USE

CHAPTER 5
FLOOD PLAIN AND FLOODWAY MANAGEMENT

Part 4
Use of Flood Plains and Floodways

Part Cross-References
Easements relating to flooding, 70-17-101.

76-5-401. Permissible open-space uses. The following open-space uses are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;
(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;
(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;
(4) forestry, including processing of forest products with portable equipment;
(5) residential uses such as lawns, gardens, parking areas, and play areas;
(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2); amd. Sec. 68, Ch. 7, L. 2001.

Cross-References
Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-402. Permissible uses within flood plain but outside floodway. Permits must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;
(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) the structures meet the minimum standards adopted by the department;
(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;
(c) commercial and industrial structures are either constructed on fill as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3); amd. Sec. 255, Ch. 418, L. 1995.

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:
(1) a building for living purposes or place of assembly or permanent use by human beings;
(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;
(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

Cross-References
Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-404. Artificial obstructions and nonconforming uses.
(1) An artificial obstruction or nonconforming use in a designated flood plain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision.
(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway without a permit from the department or the responsible political subdivision.
(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated flood plain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the department has enforced a designated flood plain or a designated floodway under 76-5-301(1) and (2).
(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated flood

plain or a designated floodway whether the obstruction proposed for alteration was located in the flood plain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1); amd. Sec. 256, Ch. 418, L. 1995.

76-5-405. Variance for obstruction or nonconforming use.

(1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

(3) An application for a permit must be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions that it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 257, Ch. 418, L. 1995.

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department:

(1) the danger to life and property by water that may be backed up or diverted by the obstruction or use;
(2) the danger that the obstruction or use will be swept downstream to the injury of others;
(3) the availability of alternate locations;
(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;
(5) the permanence of the obstruction or use;
(6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and
(7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. *1947, 89-3507(part); amd. Sec. 258, Ch. 418, L. 1995.*

TITLE 75
ENVIRONMENTAL PROTECTION

CHAPTER 6
PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 3 -- Regional Water and Wastewater Authority Act

Chapter Cross-References

Metropolitan sanitary and storm sewer systems, Title 7, ch. 13, part 1.
County water and sewer districts, 7-13-2203.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.
Cities and towns — water supplies and regulation, Title 7, ch. 13, part 44.
Nuisances, Title 27, ch. 30.
Water treatment plant operators, Title 37, ch. 42.
Licensing of plumbers, Title 37, ch. 69, part 3.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Applicability of public water supply laws to subdivisions, 76-4-131.
Water and ground water — policy of state, 85-1-101.

Part 3
Regional Water and Wastewater Authority Act

Part Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

75-6-301. Short title. This part may be cited as the "Regional Water and Wastewater Authority Act".

History: En. Sec. 1, Ch. 498, L. 1999.

75-6-302. Purpose.

(1) It is the purpose of this part to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of this part to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority.

(2) In addition to the purposes for which it may have originally been created, any authority created pursuant to this part may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of

related services, including but not limited to the following:
(a) administration;
(b) operation and maintenance; and
(c) billing and collection.

History: En. Sec. 2, Ch. 498, L. 1999.

75-6-303. Liberal construction. The provisions of this part are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of this part.

History: En. Sec. 20, Ch. 498, L. 1999.

75-6-304. Definitions. For the purposes of this part, the following definitions apply:
(1) "Authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part.
(2) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.

History: En. Sec. 3, Ch. 498, L. 1999.

Cross-References
County water and/or sewer districts, Title 7, ch. 13, part 22.

75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds.
(1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.
(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.
(3) An agreement must specify the following:
(a) its duration;
(b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;
(c) its purpose or purposes;

(d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;
(e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;
(f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and
(g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.

History: En. Sec. 4, Ch. 498, L. 1999.

75-6-306. Furnishing of funds, personnel, or services by certain public agencies — agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater — terms and conditions. A public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned water distribution company may enter into contracts with an authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to this part, for the transportation and treatment of wastewater by either party. The authority may

enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of a water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

History: En. Sec. 5, Ch. 498, L. 1999.

75-6-307 through 75-6-309 reserved.

75-6-310. Declaration of authority organization — when public body, corporate and politic. Upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number ...., regional wastewater authority number ...., or regional water and wastewater authority number ...., as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

History: En. Sec. 6, Ch. 498, L. 1999.

75-6-311. Governing body — appointments — terms of members — voting rights.

(1) The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in 75-6-305 and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.

(2) The manner of selection of the governing body and terms of office must be set forth in the agreement provided for in 75-6-305 and amendments to the agreement. The governing body of the authority shall elect one of its members as president, one as treasurer, and one as secretary.

(3) Each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater

treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.

History: En. Sec. 7, Ch. 498, L. 1999.

75-6-312. Meetings of governing body — annual audit. The governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.

History: En. Sec. 8, Ch. 498, L. 1999.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.

75-6-313. Powers of governing body.
(1) For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section.
(2) The governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation, from this state or any other state or any political subdivision or municipality of this or any other state, or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The governing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant.
(3) The governing body may sue and be sued.
(4) The governing body may enter into franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state or the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agencies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be

applicable to any member public agency.

(5) The governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in this part and may refund the indebtedness by the issuance of refunding obligations.

(6) The governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30.

(7) The governing body may acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization.

(8) The governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish regulations relating to authority improvements.

(9) The governing body may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must be paid out of the funds of the authority.

(10) The governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing body and of the authority.

(11) The governing body has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this part.

History: En. Sec. 9, Ch. 498, L. 1999.

75-6-314 through 75-6-319 reserved.

75-6-320. Revenue bonds. For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purposes, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue bonds are a lien on the revenue produced from the operation of the authority's system, but may not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this part must be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority. The bonds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiable and payable solely from the revenue derived from the operation of the system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created by this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form, may carry registration privileges, may be executed in the manner, may be payable at a place or places, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date, may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of

the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the bonds may contain covenants and restrictions upon the issuance of additional bonds that are considered necessary or advisable for the assurance of the payment of the bonds authorized by the resolutions.

History: En. Sec. 10, Ch. 498, L. 1999.

75-6-321. Items included in cost of properties. The cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of this part must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in this part, the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

History: En. Sec. 11, Ch. 498, L. 1999.

75-6-322. Trust indenture. In the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank that has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member public agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, operation, repair, maintenance, and insurance of the bonds and the custody, safeguarding, and application of all money. The resolution may also provide that all or any part of the construction work must be

contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to the purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

History: En. Sec. 12, Ch. 498, L. 1999.

75-6-323. Sinking fund for revenue bonds. At or before the time of the issuance of any bonds under this part, the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums that are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for the retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.

History: En. Sec. 13, Ch. 498, L. 1999.

75-6-324. Collection of revenue and enforcement of covenants — default — suit to compel performance — appointment and powers of receiver. The governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of the authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in 75-6-323 or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agents, or employees fail or refuse to comply with the provisions of this part or default in any covenant or agreement made with respect to the issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the district court in any of the counties in which the authority operates or in any other court of competent jurisdiction to enforce and compel performance of all duties required by this part or undertaken by the authority in connection with the issuance of the bonds. Upon application by any holder or holders of the bonds or the trustee of the trust indenture, the court

shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

History: En. Sec. 14, Ch. 498, L. 1999.

Cross-References
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

75-6-325. Statutory mortgage lien. There is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to be issued pursuant to this part, and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

History: En. Sec. 15, Ch. 498, L. 1999.

75-6-326. Rates and charges. The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges, for the use of all services rendered by the authority. The rates, fees, and charges must be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system, provide an adequate depreciation fund, provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due, and create reasonable reserves for the enumerated purposes. The rates, fees, or charges must be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.

History: En. Sec. 16, Ch. 498, L. 1999.

75-6-327. Refunding revenue bonds. If the authority has issued bonds under the provisions of this part, it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of this part relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.

History: En. Sec. 17, Ch. 498, L. 1999.

75-6-328. Exemption from taxation. Bonds issued pursuant to this part and the interest on the bonds, together with all properties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the money, revenue, and other income of the authority derived from the water supply, wastewater transportation, or treatment system are exempt from all taxation by the state or any county, municipality, political subdivision, or agency of the state, county, or municipality.

History: En. Sec. 18, Ch. 498, L. 1999.

75-6-329. Bonds as legal investment. Bonds issued under the provisions of this part are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

History: En. Sec. 19, Ch. 498, L. 1999.

TITLE 76
RANGELAND RESOURCES AND USE

CHAPTER 14
RANGELAND RESOURCES

Part 1 -- Rangeland Management

Part 1
Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;
(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and
(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(8) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983.

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;
(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;
(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;
(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee.
(1) The committee shall:
  (a) review and recommend annual and long-range work programs;
  (b) suggest priorities of work;
  (c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.
(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account.
(1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.
(2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 418, L. 1987; amd. Sec. 55, Ch. 16, L. 1991.

76-14-113. Eligibility for loans.

(1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:
   (a) is a resident of Montana;
   (b) is engaged in farming or ranching; and
   (c) possesses the necessary expertise to make a rangeland loan practical.
(2) All loans must be for rangeland improvement or development exclusively.
(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 4, Ch. 171, L. 1983; amd. Sec. 280, Ch. 42, L. 1997.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:
   (a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.
   (b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.
   (c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.
   (d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.
   (e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.
(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.
(3) Consideration must be given to the amount of funding from other sources.
(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients.

(1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.
(3) The committee shall consider applications and make recommendations to the department.
(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:
(1) prescribing the form and content of applications for loans and the required conservation plan;
(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;
(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;
(4) providing for the confidentiality of financial statements submitted; and
(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

Cross-References
Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

TITLE 23
PARKS, RECREATION, SPORTS, AND GAMBLING

CHAPTER 2
RECREATION

Part 3 -- Recreational Use of Streams

Part 3
Recreational Use of Streams

Part Cross-References
Water rights, Art. IX, sec. 3, Mont. Const.
Smith River Management Act, Title 23, ch. 2, part 4.
Owner of land bounded by water, 70-16-201.
Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.
Title by prescription, 70-19-405.
Aquatic ecosystem protections, Title 75, ch. 7.
Public ways, 85-1-111.
Navigable waters, 85-1-112.
Surface water and ground water, Title 85, ch. 2.
Fish and Wildlife, Title 87.
Navigable waters subject to fishing rights, 87-2-305.

23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:
   (a) lie within the officially recorded federal government survey meander lines thereof;
   (b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;
   (c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or
   (d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:
   (a) an irrigation or drainage canal or ditch;
   (b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;
   (c) a flood control channel; or
   (d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985; amd. Sec. 2, Ch. 28, L. 1991.

Cross-References
Recreational purposes defined, 70-16-301.
Flood plain and floodway management, Title 76, ch. 5.

23-2-302. Recreational use permitted — limitations — exceptions.

(1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:
  (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;
  (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;
  (c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;
  (d) big game hunting except by long bow or shotgun when specifically authorized by the commission;
  (e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;
  (f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or
  (g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:
  (a) big game hunting;
  (b) overnight camping;
  (c) the placement or creation of any seasonal object; or
  (d) other activities which are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters which are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of such lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985.

Cross-References

Regulation of snowmobiles, Title 23, ch. 2, part 6.
Definition of enter or remain unlawfully, 45-6-201.
Migratory game birds hunting stamp, 87-2-411.
Hunting licenses, Title 87, ch. 2, part 5.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.
Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route.

(1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of his rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure which does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of his rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that such a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of such route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility thereafter to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), he may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under

subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in this part addresses the issue of natural barriers or portage around said barriers, and nothing contained in this part makes such portage lawful or unlawful.

History: En. Sec. 3, Ch. 556, L. 1985.

Cross-References
Uniform Arbitration Act, Title 27, ch. 5.
Owner of land bounded by water, 70-16-201.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

23-2-312 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor.

(1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987.

Cross-References
Liability, Title 27, ch. 1, part 7.
Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters.

(1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:
   (a) recreational use of surface waters, including:
   (i) the streambeds underlying them;
   (ii) the banks up to the ordinary high-water mark; or
   (iii) any portage over and around barriers; or
   (b) the entering or crossing of private property to reach surface waters.

History: En. Sec. 5, Ch. 556, L. 1985.

Cross-References

Title by prescription, 70-19-405.

TITLE 2
GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 2
STANDARDS OF CONDUCT

Part 1 -- **Code of Ethics**

Part 2 -- Proscribed Acts Related to Contracts and Claims

Part 3 -- Nepotism

Chapter Cross-References
Elected official's business disclosure statement, 2-2-106.
Arrest of public officer in certain civil actions involving officer's act or omission, 27-16-102.

Part 1
Code of Ethics

Part Cross-References
Impeachment, Art. V, sec. 13, Mont. Const.
Judges — removal and discipline, Art. VII, sec. 11, Mont. Const.

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

Cross-References
Constitutional mandate to provide code of ethics, Art. XIII, sec. 4, Mont. Const.
Code of fair campaign practices, 13-35-301.

2-2-102. Definitions. As used in this part, the following definitions apply:
(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business,

whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) "Public officer" includes any state officer and any elected officer of a local government.

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college

districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995; amd. Sec. 1, Ch. 122, L. 2001.

2-2-103. Public trust — public duty.

(1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995; amd. Sec. 2, Ch. 122, L. 2001.

Cross-References

All state officers and employees to be bonded, 2-9-602.

2-2-104. Rules of conduct for public officers, legislators, and public employees.

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment

positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

Cross-References
Prohibited campaign practices, Title 13, ch. 35, part 2.
Reports of campaign contributions required, 13-37-225.

2-2-105. Ethical requirements for public officers and public employees.

(1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

Cross-References
Definitions of rules and contested cases relating to administrative rules, 2-4-102.
Public contracts generally, Title 18, ch. 1.

2-2-106. Disclosure.

(1) (a) Prior to December 15 of each even-numbered year, each state officer or holdover senator shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of political practices shall make the business disclosure statements available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995; amd. Sec. 2, Ch. 114, L. 2003; amd. Sec. 2, Ch. 130, L. 2005.

Compiler's Comments

2005 Amendment: *Chapter 130 in (1)(a) in first sentence after second "each" substituted "state officer or holdover senator" for "elected official or department director". Amendment effective October 1, 2005.*

2-2-107 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;
(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or
(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995; amd. Sec. 1, Ch. 327, L. 2003.

Cross-References
Compensation of members of Legislature, Title 5, ch. 2, part 3.

2-2-112. Ethical requirements for legislators.

(1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.
(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.
(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:
   (a) whether the conflict impedes the legislator's independence of judgment;
   (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
   (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
   (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.
(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.
(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occu-

pation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

Cross-References
Legislature — organization and procedure, Art. V, sec. 10, Mont. Const.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for public officers and public employees.
(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.
(2) A public officer or a public employee may not:
(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;
(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;
(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;
(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;
(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or
(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.
(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
(i) authorized by law; or
(ii) properly incidental to another activity required or authorized by law, such

as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 145 inserted (4) prohibiting a candidate for public office from using state funds for advertisement or public service announcement except in emergency and only if announcement reasonably necessary to candidate's official functions; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 173 in (2)(a) at beginning inserted "subject to subsection (7)"; inserted (7) allowing a public officer or employee who creates a product outside of work to be listed in the electronic directory without violating public employee conduct standards, but prohibiting public officer or employee from making directory arrangements during work hours; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 437 in (3)(a) at beginning inserted exception clause; inserted (3)(b)(ii) relating to school district compliance with laws governing public meetings of a board of trustees and any resulting dissemination of information on a bond issue or levy and prohibiting the use of public funds for commercial ads for or against a bond issue or levy; and made minor changes in style. Amendment effective April 28, 2005.

Cross-References

Quasi-judicial function defined, 2-15-102.
Unofficial use of state-owned motor vehicle — misdemeanor, 2-17-432.
Bribery, 45-7-101.
Compensation for past official behavior — misdemeanor, 45-7-103.

2-2-122 through 2-2-124 reserved.

2-2-125. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

2-2-126 through 2-2-130 reserved.

2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995; amd. Sec. 1, Ch. 65, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 65 near beginning of second sentence substituted "commissioner of political practices" for "secretary of state". Amendment effective October 1, 2005.

2-2-132. Repealed. Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

2-2-133 and 2-2-134 reserved.

2-2-135. Ethics committees.

(1) Each house of the legislature shall establish an ethics committee. The committee must consist of two members of each political party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

History: En. Sec. 14, Ch. 562, L. 1995.

2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney.

(1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential

documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

History: En. Sec. 15, Ch. 562, L. 1995; amd. Sec. 4, Ch. 42, L. 1997; amd. Sec. 4, Ch. 122, L. 2001.

Cross-References
Commissioner of Political Practices, Title 13, ch. 37, part 1.

2-2-137. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 16, Ch. 562, L. 1995.

2-2-138. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 17, Ch. 562, L. 1995.

2-2-139. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 18, Ch. 562, L. 1995.

2-2-140 and 2-2-141 reserved.

2-2-142. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 19, Ch. 562, L. 1995.

2-2-143. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. Sec. 20, Ch. 562, L. 1995.

2-2-144. Enforcement for local government.

(1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than $50 or more than $1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than $50 or more than $1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

History: En. Sec. 21, Ch. 562, L. 1995; amd. Sec. 5, Ch. 122, L. 2001.

Part 2
Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts.

(1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) "former employee" does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-

501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981; amd. Sec. 1, Ch. 65, L. 1991; amd. Sec. 1, Ch. 322, L. 1993; amd. Sec. 1, Ch. 181, L. 2001.

Cross-References
Ethical principles relating to interest in contract, 2-2-105, 2-2-121.
Transfers and collusion prohibited, 18-4-141.

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.

2-2-203. Voidable contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.

2-2-205. Affidavit to be required by auditing officers. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this part.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505.

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

2-2-207. Settlements to be withheld on affidavit.

(1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part must suspend such settlement or payment and cause such officer to be prosecuted for such violation by the county attorney of the county.

(2) In case there be judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507.

Part 3
Nepotism

Part Cross-References

Discrimination in employment, 49-2-303.
Employment of state and local government personnel, 49-3-201.

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.

(1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of 2-2-303 and this section do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;
(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;
(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;
(e) the employment of election judges;
(f) the employment of pages or temporary session staff by the legislature; or
(g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the time and place for the intended action must be published at least 15 days prior to the intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part); amd. Sec. 1, Ch. 117, L. 1987; amd. Sec. 1, Ch. 55, L. 1991; amd. Sec. 1, Ch. 238, L. 1991; amd. Sec. 10, Ch. 562, L. 1995; amd. Sec. 1, Ch. 138, L. 2005; amd. Sec. 1, Ch. 316, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 138 in (2)(c) at end after "days" inserted "as defined by the trustees in 20-1-302". Amendment effective July 1, 2005.
Chapter 316 inserted (2)(g) exempting county commissioners of a county with population of less than 10,000 if all the commissioners except the abstaining commissioner approve the appointment; in (3) near beginning after "subsection (2)" inserted "(b) or (2)(g)", before "written notice" deleted "the school district trustees shall give", near middle after "prior to the" deleted "trustees"', and at end after "located" inserted "or the county office or position is located"; and made minor changes in style. Amendment effective October 1, 2005.

Cross-References
Affinity, 1-1-219.
Consanguinity, 72-11-102 through 72-11-104.

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than $50 or more than $1,000 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520; amd. Sec. 1, Ch. 253, L. 1989.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 -- Notice and Opportunity to Be Heard

Part 2 -- Open Meetings

Chapter Cross-References
Government Accountability Act, Title 2, ch. 11, part 1.

Part 1
Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:
   (a) the legislature and any branch, committee, or officer thereof;
   (b) the judicial branches and any committee or officer thereof;
   (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
   (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:
   (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
   (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to ensure guidelines adopted.

(1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda

of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5); amd. Sec. 1, Ch. 425, L. 2003.

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.
Adoption of rules, 2-4-302.
Publication of rules — availability, 2-4-312.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

Cross-References
Montana Administrative Procedure Act — proceedings, 2-4-302, 2-4-306, 2-4-601.
Publication and content of local government notices, 7-1-2121.

2-3-105. Supplemental notice by radio or television.

(1) Any official of the state or any of its political subdivisions who is required by

law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

Cross-References
Affidavits — generally, Title 26, ch. 1, part 10.
Affidavit defined, 26-1-1001.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views — public hearings.

(1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3); amd. Sec. 1, Ch. 487, L. 1997.

Cross-References
Right of public participation in government, Art. II, sec. 8, Mont. Const.
Submission of comments by electronic mail over Internet, 2-3-301.

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:
(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

Cross-References
Emergency rules, 2-4-303.
Disaster and emergency services, Title 10, ch. 3.

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition made within 30 days of the date of the decision of any person whose rights have been prejudiced.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229.

Part 2
Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the

agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

Cross-References
Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.
(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.
(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.
(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.
    (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).
(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.
(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 218 in (1) near end inserted "including the supreme court"; inserted (5) allowing the supreme court to close a meeting involving judicial deliberations in an adversarial proceeding; and made minor changes in style. Amendment effective April 14, 2005.

Cross-References

Right of public to observe deliberations of all public bodies, Art. II, sec. 9, Mont. Const.
Right of individual privacy, Art. II, sec. 10, Mont. Const.
Legislature — organization and procedure, Art. V, sec. 10, Mont. Const.
Notice of agency action required, 2-3-103.
Deliberations of Medical Legal Panel to be secret, 27-6-603.
Criminal penalty for closed meeting — official misconduct, 45-7-401.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405.

2-3-212. Minutes of meetings — public inspection.

(1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.
(2) Such minutes shall include without limitation:
   (a) date, time, and place of meeting;
   (b) a list of the individual members of the public body, agency, or organization in attendance;
   (c) the substance of all matters proposed, discussed, or decided; and
   (d) at the request of any member, a record by individual members of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403.

Cross-References

Citizens entitled to inspect and copy records, 2-6-102.
Records open to public inspection, 2-6-104.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632.

CHAPTER 7
STUDIES, REPORTS, AND AUDITS

Part 5 -- Audits of Political Subdivisions

Part 5
Audits of Political Subdivisions

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts,

cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) solid waste management districts;
(xix) rural improvement districts;
(xx) school districts including a district's extracurricular funds;
(xxi) soil conservation districts;
(xxii) special education or other cooperatives;
(xxiii) television districts;
(xxiv) urban transportation districts;
(xxv) water conservancy districts; and
(xxvi) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 489, L. 1991; amd. Sec. 2, Ch. 7, L. 2001; amd. Sec. 33, Ch. 278, L. 2001; amd. Sec. 8, Ch. 483, L. 2001; amd. Sec. 3, Ch. 114, L. 2003.

2-7-502. Short title — purpose.

(1) This part may be cited as the "State of Montana Single Audit Act".

(2) The purposes of this part are to:
(a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;
(b) establish uniform requirements for financial reports and audits of local government entities;
(c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;
(d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;
(e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;
(f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and
(g) promote the efficient and effective use of audit resources.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517; amd. Sec. 2, Ch. 489, L. 1991.

Cross-References
Constitutional mandate for strict financial accountability of local governments, Art. VIII, sec. 12, Mont. Const.

2-7-503. Financial reports and audits of local government entities.

(1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must

cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of $200,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979; amd. Sec. 1, Ch. 573, L. 1981; amd. Sec. 1, Ch. 49, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 84, L. 1985; amd. Sec. 1, Ch. 565, L. 1985;

amd. Sec. 1, Ch. 673, L. 1985; amd. Sec. 1, Ch. 140, L. 1989; amd. Sec. 3, Ch. 489, L. 1991; amd. Sec. 5, Ch. 430, L. 1995; amd. Sec. 1, Ch. 91, L. 1997; amd. Sec. 1, Ch. 458, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 34, Ch. 278, L. 2001.

Cross-References
Fiscal strict accountability — local governments, Art. VIII, sec. 12, Mont. Const.
Rural and municipal fire departments, Title 7, ch. 33.
Fire department retirement associations, Title 19, ch. 18.
Classification of school districts, 20-6-201, 20-6-301.
Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.
Conservancy district finances, Title 85, ch. 9, part 6.

2-7-504. Accounting methods.
(1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.
(2) The rules adopted by the department must be in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor.
History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530; amd. Sec. 1, Ch. 1, Sp. L. June 1989; amd. Sec. 1, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 489, L. 1991; amd. Sec. 6, Ch. 430, L. 1995; amd. Sec. 35, Ch. 278, L. 2001.

2-7-505. Audit scope and standards.
(1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.
(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.
(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.

History: En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518; amd. Sec. 2, Ch. 573, L. 1981; amd. Sec. 5, Ch. 489, L. 1991; amd. Sec. 36, Ch. 278, L. 2001.

2-7-506. Audit by independent auditor.

(1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:
   (a) criteria for the selection of the independent auditor;
   (b) procedures and qualifications for placing applicants on the roster;
   (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and
   (d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

History: En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525; amd. Sec. 3, Ch. 573, L. 1981; amd. Sec. 1, Ch. 260, L. 1989; amd. Sec. 6, Ch. 489, L. 1991.

Cross-References

Licensure of accountants, 2-15-1756; Title 37, ch. 50.

2-7-507. Duty of officers to aid in audit. The officers and employees of the local government entities referred to in this part shall provide all reasonable facilities for the audit and shall furnish all information to the independent auditor necessary for the conduct of the audit.

History: En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527; amd. Sec. 7, Ch. 489, L. 1991.

2-7-508. Power to examine books and papers. The independent auditor may examine any books, papers, accounts, and documents in the office or possession of any local government entity.

History: En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528; amd. Sec. 8, Ch. 489, L. 1991.

2-7-509. Audits of school-related organizations — costs — criteria.

(1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:
   (a) the audit provided for in subsection (1); and
   (b) pay the costs of the audit.

(3) An audit of an organization performed under this section must determine if:
   (a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;
   (b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;
   (c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;
   (d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and
   (e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

History: En. Sec. 1, Ch. 678, L. 1991.

2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy.

(1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city,

or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of his office and the governing body of the local government entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit shall be referred to the county attorney.

History: En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526; amd. Sec. 1, Ch. 43, L. 1981; amd. Sec. 9, Ch. 489, L. 1991.

Cross-References

Prosecutorial duty of County Attorney, 7-4-2712.

2-7-512. Exit review conference. Upon completion of each audit, the independent auditor is required to hold with the appropriate officials an exit review conference in which the audit results must be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519; amd. Sec. 10, Ch. 489, L. 1991.

2-7-513. Content of audit report and financial report.

(1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

History: En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520; amd. Sec. 11, Ch. 489, L. 1991; amd. Sec. 7, Ch. 430, L. 1995; amd. Sec. 37, Ch. 278, L. 2001.

2-7-514. Filing of audit report and financial report.

(1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

(3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3); amd. Sec. 1, Ch. 169, L. 1985; amd. Sec. 2, Ch. 140, L. 1989; amd. Sec. 12, Ch. 489, L. 1991; amd. Sec. 1, Ch. 509, L. 1995.

2-7-515. Actions by governing bodies.

(1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the

department may refer the case to the attorney general to prosecute the case at the expense of the local government entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522; amd. Sec. 1, Ch. 128, L. 1991; amd. Sec. 13, Ch. 489, L. 1991.

2-7-516. Audit fees.

(1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524; amd. Sec. 4, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 489, L. 1991.

2-7-517. Penalty.

(1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

History: En. Sec. 6, Ch. 573, L. 1981; amd. Sec. 3, Ch. 3, L. 1985; amd. Sec. 15, Ch. 489, L. 1991; amd. Sec. 7, Ch. 42, L. 1997.

2-7-518. Deposit of fees. All fees received from local government entities must be deposited in the enterprise fund to the credit of the department of administration for administration of Title 2, chapter 7, part 5.

History: En. Sec. 7, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 489, L. 1991; amd. Sec. 9, Ch. 483, L. 2001.

2-7-519 and 2-7-520 reserved.

2-7-521. Publication.

(1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.

(4) Publication costs must be borne by the audited local government entity.

History: En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523; amd. Sec. 1, Ch. 386, L. 1983; amd. Sec. 3, Ch. 140, L. 1989; amd. Sec. 1, Ch. 607, L. 1989; amd. Sec. 17, Ch. 489, L. 1991.

Cross-References

County advertising — contract with newspaper within county, 7-5-2411.

2-7-522. Report review.

(1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies

or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

History: En. Sec. 18, Ch. 489, L. 1991.

CHAPTER 9
LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 1-- Liability Exposure

Part 2 -- Comprehensive State Insurance Plan

Part 3 -- Claims and Actions

Chapter Cross-References
Crime victim assistance by government — no cause of action against government for damages, 46-24-105.

Part 1
Liability Exposure

2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3); amd. Sec. 3, Ch. 675, L. 1983; amd. Sec. 1, Ch. 389, L. 1985; amd. Secs. 1, 3, Ch. 22, Sp. L. June 1986.

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

Cross-References
State subject to suit, Art. II, sec. 18, Mont. Const.

2-9-103. Actions under invalid law or rule — same as if valid — when.

(1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979.

Cross-References
Requisites for validity of rule, 2-4-305.

2-9-104. Repealed. Sec. 4, Ch. 675, L. 1983.

History: En. 82-4334 by Sec. 8, Ch. 189, L. 1977; R.C.M. 1947, 82-4334(1), (2); amd. Sec. 2, Ch. 425, L. 1979.

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.

Cross-References
Exemplary damages, 27-1-221.

2-9-106. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 1, Ch. 675, L. 1983.

2-9-107. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 2, Ch. 675, L. 1983; amd. Sec. 2, Ch. 389, L. 1985.

2-9-108. Limitation on governmental liability for damages in tort.

(1) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $750,000 for each claim and $1.5 million for each occurrence.

(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. This subsection does not create an exception from the dollar limitations provided for in subsection (1).

(3) An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: En. Sec. 2, Ch. 22, Sp. L. June 1986; amd. Sec. 1, Ch. 337, L. 1997.

2-9-109 and 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions.

(1) As used in this section:

(a) the term "governmental entity" means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

(5) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328; amd. Sec. 1, Ch. 818, L. 1991; amd. Sec. 1, Ch. 821, L. 1991.

Cross-References

Immunity, Art. V, sec. 8, Mont. Const.

2-9-112. Immunity from suit for judicial acts and omissions.

(1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329.

2-9-113. Immunity from suit for certain gubernatorial actions. *The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.*

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.

Cross-References

Special sessions — call by members, Art. V, sec. 6, Mont. Const.; 5-2-103.
Veto power, Art. VI, sec. 10, Mont. Const.
Governor's call for special sessions of Legislature, Art. VI, sec. 11, Mont. Const.; 5-2-103.
Action by Governor on bills, Title 5, ch. 4, part 3.

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2
Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state.

(1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of

insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: (1) thru (3)En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5)En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.

Cross-References
Insurance of state buildings and contents, 2-17-104.

2-9-202. Apportionment of costs — creation of deductible reserve.

(1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs must be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to use a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish the deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund must be used by the department to pay claims under parts 1 through 3 of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of the fund must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) Money in reserve funds established under this section that is not needed to meet expected expenditures must be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305; amd. Sec. 3, Ch. 703, L. 1985; amd. Sec. 1, Ch. 532, L. 1997.

Cross-References
Unified investment program, Title 17, ch. 6, part 2.

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance.

(1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(1)(b) through (1)(d). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(1)(b) through (1)(d) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306; amd. Sec. 1, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 68, L. 1995; amd. Sec. 1, Ch. 29, L. 2001; amd. Sec. 1, Ch. 191, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 191 in (1) in second and third sentences substituted reference to 33-2-302(1)(b) through (1)(d) for reference to 33-2-302(2) through (4). Amendment effective July 1, 2005.

Cross-References

Unified investment fund — local governments may use, 17-6-204.

2-9-212. Political subdivision tax levy to pay premiums.

(1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) If a political subdivision made contributions for group benefits under 2-18-703 on or before July 1, 2001, the increase in the political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect at the beginning of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a). If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, *82-4309; amd. Sec. 2, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 568, L. 1991; amd. Sec. 2, Ch. 584, L. 1999; amd. Sec. 1, Ch. 511, L. 2001; amd. Sec. 1, Ch. 529, L. 2003.*

Cross-References

Property tax limitation, Title 15, ch. 10, part 4.

Part 3
Claims and Actions

Part Cross-References

Venue of actions against state, county, and political subdivisions, 25-2-126.

2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite.

(1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in writing within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312; amd. Sec. 1, Ch. 507, L. 1987; amd. Sec. 1, Ch. 494, L. 1991.

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

Cross-References

Statutes of limitations, Title 27, ch. 2.

2-9-303. Compromise or settlement of claim against state.

(1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding $10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial dis-

trict, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987; amd. Sec. 1, Ch. 172, L. 2001.

Cross-References
Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.

2-9-304. Compromise or settlement of claim against political subdivision.

(1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318; amd. Sec. 2, Ch. 111, L. 1987; amd. Sec. 1, Ch. 103, L. 1995; amd. Sec. 2, Ch. 172, L. 2001.

Cross-References
Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.
Joinder of parties, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).
Principal's responsibility for agent's negligence, 28-10-602.
Indemnity, Title 28, ch. 11, part 3.

2-9-305. Immunization, defense, and indemnification of employees.

(1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity

employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323; amd. Sec. 1, Ch. 530, L. 1983.

Cross-References

Damages and costs awarded against government officer to be recovered from governing entity employing officer, 27-26-403.

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

Cross-References

Venue of actions against state, county, and political subdivisions, 25-2-126.

2-9-312. Renumbered 25-2-126(1) and (3). Sec. 18(2), Ch. 432, L. 1985.

2-9-313. Service of process on state. In all actions against the state arising under this chapter, the state must be named the defendant and the summons and complaint must be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P. The state shall serve an answer within 40 days after service of the summons and complaint.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979; amd. Sec. 1, Ch. 3, L. 1993.

2-9-314. Court approval of attorney's fee.

(1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorneys' fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities. A political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

(1) insurance;
(2) the general fund or any other funds legally available to the governing body;
(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment or settlement;
(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1); amd. Sec. 3, Ch. 213, L. 1989; amd. Sec. 1, Ch. 23, L. 1999; amd. Sec. 38, Ch. 278, L. 2001; amd. Sec. 5, Ch. 574, L. 2001.

Cross-References
Authority of county to issue general obligation bonds to satisfy judgments, 7-7-2202.
Municipal general obligation bonds, Title 7, ch. 7, part 42.
School bonds for funding judgment against school district, 20-9-403.
Actions arising from seizure or sale of property for taxes, 27-2-210.

2-9-317. No interest if judgment paid within two years — exception. Except as provided in 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2); amd. Sec. 2, Ch. 508, L. 1997.

Cross-References
Amount of interest payable on judgments, 25-9-205.
Interest on recovery of damages, 27-1-211 through 27-1-214.

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.

Cross-References
Execution of judgment, Title 25, ch. 13.
Prejudgment attachment, Title 27, ch. 18.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 5 -- Travel, Meals, and Lodging

Part 6 -- Leave Time

Chapter Cross-References
Pension systems, Title 19.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.

Part 5
Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding $35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $5 for the morning meal, $6 for the midday meal, and $12 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:
   (a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.
   (b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of lodging when the actual cost exceeds the maximum established in subsection (1) or (2)(a).

(4) For travel to a foreign country, the following provisions apply:
   (a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for

foreign areas in establishing the rates.

(b) All claims for lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of $12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981; amd. Sec. 1, Ch. 646, L. 1983; amd. Sec. 1, Ch. 399, L. 1987; amd. Sec. 5, Ch. 83, L. 1989; amd. Sec. 1, Ch. 207, L. 1989; amd. Sec. 1, Ch. 561, L. 1991; amd. Sec. 1, Ch. 439, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State agencies to account for in-state lodging expenditures — allocation of lodging facility use tax to state general fund, 15-65-131.

Government officer as witness — no per diem for criminal proceeding, 26-2-501.

2-18-502. Computation of meal allowance.

(1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

(a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539; amd. Sec. 1, Ch. 123, L. 1983; amd. Sec. 2, Ch. 439, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-18-503. Mileage — allowance.

(1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee, including a legislator on legislative business, is authorized to travel by motor vehicle, and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, while traveling between their residences and Helena, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979; amd. Sec. 3, Ch. 439, L. 1997; amd. Sec. 8, Ch. 558, L. 1999; amd. Sec. 1, Ch. 4, Sp. L. August 2002; amd. Sec. 1, Ch. 112, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 112 in (2)(a) near end before "allowed" substituted "48.15% of the mileage rate" for "52% of the low mileage rate"; and made minor changes in style. Amendment effective March 24, 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. Hereafter, no state officer or employee of the state shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Part 6
Leave Time

Part Cross-References
Leave for military training program, 10-1-1009.
Compensation of state employee for time spent answering subpoena, 26-2-515.

2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.
(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent

contractors or hired under personal services contracts, and student interns.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

(11) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (11)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

(12) "Student intern" means a student intern as defined in 2-18-101.

(13) "Temporary employee" means a temporary employee as defined in 2-18-101.

(14) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(15) "Vacation leave" means a leave of absence with pay for the purpose of rest,

relaxation, or personal business at the request of the employee and with the concurrence of the employer.

History: En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979; amd. Sec. 1, Ch. 178, L. 1981; amd. Sec. 1, Ch. 260, L. 1991; amd. Sec. 2, Ch. 756, L. 1991; amd. Sec. 7, Ch. 339, L. 1997; amd. Sec. 2, Ch. 314, L. 2001; amd. Sec. 1, Ch. 11, L. 2005; amd. Sec. 3, Ch. 75, L. 2005; amd. Sec. 1, Ch. 582, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 11 in definition of short-term worker in (a) at beginning inserted "for the executive and judicial branches" and inserted (b) defining term for legislative branch; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 75 in definition of employee at end inserted "and student interns"; inserted definition of student intern; and made minor changes in style. Amendment effective March 24, 2005.

Chapter 582 in definition of sick leave in (a) at end after "family or" deleted "for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606" and inserted (b) outlining additional circumstances for which an employee is entitled to a leave of absence with pay for sick leave; and made minor changes in style. Amendment effective May 6, 2005.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

2-18-603. Holidays — observance when falling on employee's day off.

(1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on the employee's last regularly scheduled working day immediately before the holiday or on the employee's first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include non-teaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979; amd. Sec. 1, Ch. 312, L. 1981; amd. Sec. 8, Ch. 339, L. 1997.

Cross-References
Legal holidays, 1-1-216.

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and may, when necessary, promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse of these provisions. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision of the state.

History: En. Sec. 10, Ch. 568, L. 1979; amd. Sec. 2, Ch. 582, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 582 near middle of first sentence before "promulgate rules" substituted "may, when necessary" for "shall"; and made minor changes in style. Amendment effective May 6, 2005.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
Job-sharing positions, 2-18-107.

2-18-605. Repealed. Sec. 13, Ch. 339, L. 1997.

History: En. Sec. 2, Ch. 178, L. 1981.

2-18-606. Parental leave for state employees.

(1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:
   (a) the employee is adopting a child; or
   (b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 33-22-130.

(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

History: En. Sec. 1, Ch. 756, L. 1991; amd. Sec. 1, Ch. 2, L. 1997; amd. Sec. 158, Ch. 480, L. 1997.

Cross-References

Maternity leave and job reinstatement, 49-2-310, 49-2-311.

2-18-607 through 2-18-610 reserved.

2-18-611. Annual vacation leave.

(1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker or a student intern, as both terms are defined in 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker or as a student intern does not apply toward the person's rate of earning vacation leave credits.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979; amd. Sec. 1, Ch. 280, L. 1983; amd. Sec. 2, Ch. 593, L. 1985; amd. Sec. 1, Ch. 328, L. 1987; amd. Sec. 9, Ch. 339, L. 1997; amd. Sec. 2, Ch. 11, L. 2005; amd. Sec. 4, Ch. 75, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 11 in (6) substituted "2-18-601" for "2-18-101". Amendment effective October 1, 2005.

Chapter 75 in (6) in two places inserted reference to student intern; and made minor changes in style. Amendment effective March 24, 2005.

Cross-References

Job-sharing positions, 2-18-107.

2-18-612. Rate earned.

(1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:
(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or
(ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.
(b) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979; amd. Sec. 3, Ch. 593, L. 1985.

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969; R.C.M. 1947, 59-1004.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:
(1) having been ordered on active duty with the armed forces of the United States;
(2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
(3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).

Cross-References
Leave for military training program, 10-1-1009.

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency with regard to the best interest of the state, any county or city thereof as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006.

2-18-617. Accumulation of leave — cash for unused — transfer.
(1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.
(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).
(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.
(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy.

History: (1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979; amd. Sec. 1, Ch. 115, L. 1993; amd. Sec. 1, Ch. 143, L. 1997.

2-18-618. Sick leave.

(1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an

employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979; amd. Sec. 2, Ch. 280, L. 1983; amd. Sec. 1, Ch. 707, L. 1985; amd. Sec. 2, Ch. 328, L. 1987; amd. Sec. 1, Ch. 414, L. 1989; amd. Sec. 1, Ch. 25, L. 1991; amd. Sec. 2, Ch. 758, L. 1991; amd. Sec. 10, Ch. 339, L. 1997; amd. Sec. 11, Ch. 272, L. 2001.

Compiler's Comments

Contingent Effective Date: Section 19(2), Ch. 272, L. 2001, provided that the version effective on occurrence of contingency is "effective on the date that the secretary of state receives certification from the department of administration pursuant to [section 13] [not codified] that the commissioner of internal revenue has determined that the plan established pursuant to [sections 1 through 10] [Title 2, chapter 18, part 13] is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code." On August 1, 2003, the Department of Administration certified to the Secretary of State that the Commissioner of Internal Revenue had determined that Montana's Voluntary Employees' Beneficiary Plan is exempt from federal income tax under section 501(a) of the Internal Revenue Code. Section 501(a) exempts organizations described in section 501(c) so the contingency, which referred to section 501(c)(9), was met.

Cross-References

Job-sharing positions, 2-18-107.

2-18-619. Jury duty — service as witness.

(1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to

charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979.

Cross-References
Juries and jurors, Title 3, ch. 15.
Subpoenas and witnesses, Title 26, ch. 2.

2-18-620. Mandatory leave of absence for employees holding public office — return requirements.

(1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 692, L. 1991.

Cross-References
Unlawful political acts of employers and employees, 13-35-226.

2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is a collective bargaining agreement to the contrary applicable.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5); amd. Sec. 22, Ch. 684, L. 1985.

2-18-622. Reduction in force — severance pay and retraining allowance required. If a reduction in force is necessary, the state may provide severance pay and a retraining allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

History: En. Sec. 1, Ch. 758, L. 1991; amd. Sec. 8, Ch. 640, L. 1993; (3)En. Sec. 13, Ch. 640, L. 1993.

2-18-623 through 2-18-625 reserved.

2-18-626. Department of justice employees — payment of compensation for time spent answering subpoena. A department of justice employee must receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when called to testify in connection with the employee's official duties. The department of justice may bill the person or organization requesting issuance of the subpoena for reimbursement for the employee's time.

History: En. Sec. 1, Ch. 363, L. 1987.

Cross-References
Subpoenas and witnesses, Title 26, ch. 2.

2-18-627. Paid leave for disaster relief volunteer service.
(1) An agency may grant to a state employee up to 15 days in a calendar year of a paid leave of absence for the employee to participate in specialized disaster relief services for the American red cross if:
   (a) the employee is a certified American red cross disaster relief volunteer; and
   (b) the American red cross has requested the employee's services.
(2) Leave time granted pursuant to this section:
   (a) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;

(b) commences upon approval of the employee's employing agency; and
(c) may not be charged against any other leave to which the employee is entitled.

(3) For purposes of this section, the following definitions apply:
(a) "Agency" has the meaning provided in 2-18-101.
(b) "Employee" means any person employed by an agency, except an elected official.

History: En. Sec. 1, Ch. 225, L. 1999.

2-18-628 through 2-18-640 reserved.

2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts.

(1) An employee of a county hospital or county rest home in a third, fourth, fifth, sixth, or seventh class county or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.

History: En. Sec. 1, Ch. 559, L. 2001.

TITLE 7
LOCAL GOVERNMENT

CHAPTER 5
GENERAL OPERATION AND CONDUCT OF BUSINESS

Part 1 -- Local Government Ordinances, Resolutions, and Initiatives and Referendums

Part 1
Local Government Ordinances, Resolutions, and Initiatives and Referendums

Part Cross-References
Other similar powers for:
Option 2 of city-county consolidation, 7-3-1222 through 7-3-1232.
Municipal commission government, 7-3-4222.
Municipal commission-manager government, 7-3-4324 through 7-3-4327.
County resolutions, Title 7, ch. 5, part 22.
Municipal ordinances and resolutions, Title 7, ch. 5, part 42.
County ordinance restricting phosphorus sales, Title 75, ch. 7, part 4.

7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101.

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

7-5-103. Ordinance requirements.
(1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.
(2) No ordinance passed shall contain more than one comprehensive subject, which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.
(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.
(4) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5).

Cross-References
County control of litter, 7-5-2109.
Regulation of pawnbrokers located outside incorporated city or town, 7-21-2120.
Restriction on local government regulation of firearms, 45-8-351.
Regulation of gang activity, Title 45, ch. 8, part 4.

7-5-104. Emergency ordinance. *In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.*

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

7-5-107. Register of ordinances and codification.
(1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.
(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.
(b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

7-5-108. Adoption and amendment of codes by reference.
(1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption

of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

7-5-109. Penalty for violation of ordinance.

(1) Except as provided in subsection (2), a local government may fix penalties for the violation of an ordinance that do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104; amd. Sec. 1, Ch. 597, L. 1993.

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements.
(1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.
(2) Resolutions may be submitted and adopted at a single meeting of the governing body.
(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum.
(1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.
(2) The powers of initiative shall not extend to the following:
  (a) the annual budget;
  (b) bond proceedings, except for ordinances authorizing bonds;
  (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or
  (d) the levy of special assessments pledged for the payment of principal and interest on bonds.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).

Cross-References
Right of initiative and referendum, Art. XI, sec. 8, Mont. Const.

7-5-132. Procedure to exercise right of initiative or referendum.

(1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting a referendum on the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 60 days of the effective date of the ordinance suspends the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part;

(d) contain the signatures of 15% of the registered electors of the local government; and

(e) contain transition provisions if the measure changes terms of office or forms of government.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979; amd. Sec. 2, Ch. 359, L. 1991; amd. Sec. 1, Ch. 374, L. 2001.

7-5-133. Processing of petition.

(1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question must be submitted to the electors at the next regular or primary election.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 24, Ch. 387, L. 1995.

7-5-134. Signatures — submission for approval — statement of purpose and implication.

(1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

(2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form.

(3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit. The local government attorney shall review the sample petition for form and compliance with 7-5-131 and 7-5-132 and prepare a concise ballot statement not exceeding 100 words. The ballot statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

(4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

[] FOR weekly commission meetings.

[] AGAINST weekly commission meetings.

(5) If the petition is rejected as to form, the election administrator must send written notice and a statement of the reasons for rejection to the person who submitted the sample petition within 21 days after submission of the sample.

(6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

(7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

History: (1)En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107; (2)—(7)En. Secs. 1, 2, Ch. 69, L. 1981; amd. Sec. 3, Ch. 359, L. 1991.

7-5-135. Suit to determine validity and constitutionality of petition and proposed action.

(1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional, but such a suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.

(3) If the defendant prevails, he is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 1, Ch. 567, L. 1985.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

7-5-136. Submission of question to electors.

(1) Any ordinance proposed by petition, any amended ordinance proposed by petition, or any referendum on an ordinance entitled to be submitted to the electors must be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election to be held in conjunction with a regular or primary election; or

(b) the governing body calls for a special election on the question to be held in conjunction with a regular or primary election.

(2) A special election may not be held sooner than 75 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 75 days prior to the next regular election, the election must be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance that is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed must be published.

(5) The question must be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when

the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979; amd. Sec. 16, Ch. 250, L. 1985; amd. Sec. 25, Ch. 387, L. 1995.

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

7-5-138 and 7-5-139 reserved.

7-5-140. Recordkeeping. A city, town, or county that has the authority to require a private entity to keep records may prescribe the form and content of the records but may not prescribe the method of keeping the required records.

History: En. Sec. 16, Ch. 459, L. 1997.

TITLE 27

CIVIL LIABILITY, REMEDIES, AND LIMITATIONS

CHAPTER 5
UNIFORM ARBITRATION ACT

Part 1 -- Submission to Arbitration

Part 2 -- Action by Arbitrators

Chapter Cross-References
Pleading arbitration as affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).
Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 1
Submission to Arbitration

Part Cross-References
Multistate Tax Compact — Article IX arbitration provisions, 15-1-601.
Arbitration of stream portage rights, 23-2-311.
Statute of limitations tolled by submission to arbitration, 27-2-405.
Medical malpractice claims — effect of arbitration, 27-6-105.
Chiropractic malpractice claims — arbitration, 27-12-105.
Arbitration of farm mutual insurance claims, 33-4-411.
Arbitration of new motor vehicle warranty disputes, 61-4-515.
Arbitration of threshers' lien claims, 71-3-801.
Arbitration of hail insurance claims, 80-2-243.
Arbitration of watercourse construction projects adversely affecting fish and game habitat, 87-5-505.

27-5-101. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1281; re-en. Sec. 9972, R.C.M. 1935; R.C.M. 1947, 93-201-1.

27-5-102. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1282; re-en. Sec. 9973, R.C.M. 1935; R.C.M. 1947, 93-201-2.

27-5-103. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-104. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-105. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 311, p. 109, Bannack Stat.; re-en. Sec. 367, p. 209, L. 1867; re-en. Sec. 441, p. 123, Cod. Stat. 1871; re-en. Sec. 468, p. 165, L. 1877; re-en. Sec. 468, 1st Div. Rev. Stat. 1879; re-en. Sec. 481, 1st Div. Comp. Stat. 1887; re-en. Sec. 2279, C. Civ. Proc. 1895; re-en. Sec. 7374, Rev. C. 1907; re-en. Sec. 9981, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1290; re-en. Sec. 9981, R.C.M. 1935; R.C.M. 1947, 93-201-10.

27-5-106 through 27-5-110 reserved.

27-5-111. Short title. This chapter may be cited as the "Uniform Arbitration Act".

History: En. Sec. 1, Ch. 684, L. 1985.

27-5-112. Uniformity of interpretation. This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

History: En. Sec. 2, Ch. 684, L. 1985.

27-5-113. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-115, 27-5-311, 27-5-312(1) and (3) through

(5), 27-5-313, and 27-5-322 apply in each case.

History: En. Sec. 3, Ch. 684, L. 1985; amd. Sec. 1, Ch. 258, L. 1991.

Cross-References
Arbitration of unlawful termination of public employee, 2-18-621.
Arbitration of public employees' collective bargaining issue, 39-31-310.
Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

27-5-114. Validity of arbitration agreement — exceptions.

(1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:
   (a) claims arising out of personal injury, whether based on contract or tort;
   (b) any contract by an individual for the acquisition of real or personal property, services, or money or credit when the total consideration to be paid or furnished by the individual is $5,000 or less;
   (c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or
   (d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989; amd. Sec. 1, Ch. 19, L. 1997.

Cross-References
Arbitration of unlawful termination of public employee, 2-18-621.
Statute of limitations tolled by submission to arbitration, 27-2-405.
Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.
Arbitration of public employees' collective bargaining issue, 39-31-310.
Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.
Arbitration of new motor vehicle warranty disputes, 61-4-515.
Arbitration of threshers' lien claims, 71-3-801.

27-5-115. Proceedings to compel or stay arbitration.

(1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to

the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

Cross-References
Statute of limitations tolled by submission to arbitration, 27-2-405.

Part 2
Action by Arbitrators

27-5-201. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; R.C.M. 1947, 93-201-5(part).

27-5-202. Repealed. Sec. 28, Ch. 684, L. 1985.

History: Ap. p. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1284; re-en. Sec. 9975, R.C.M. 1935;

Sec. 93-201-4, R.C.M. 1947; Ap. p. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; Sec. 93-201-5, R.C.M. 1947; R.C.M. 1947, 93-201-4, 93-201-5(part).

27-5-203. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part).

27-5-204 through 27-5-210 reserved.

27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History: En. Sec. 6, Ch. 684, L. 1985.

27-5-212. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

History: En. Sec. 7, Ch. 684, L. 1985.

27-5-213. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the contro-

versy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History: En. Sec. 8, Ch. 684, L. 1985.

27-5-214. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right prior to the proceeding or hearing is ineffective.

History: En. Sec. 9, Ch. 684, L. 1985.

27-5-215. Witnesses, subpoenas, and depositions.

(1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.

(4) Fees for attendance as a witness are the same as for a witness in the district court.

History: En. Sec. 10, Ch. 684, L. 1985.

27-5-216. Award.

(1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

History: En. Sec. 11, Ch. 684, L. 1985.

Cross-References

Pleading arbitration and award as affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: En. Sec. 12, Ch. 684, L. 1985.

27-5-218. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: En. Sec. 13, Ch. 684, L. 1985.

Cross-References

Cost of arbitration between firefighters' organization and public employer, 39-34-106.

Part 3
Procedure Following Award

27-5-301. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

27-5-303. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. Repealed. Sec. 28, Ch. 684, L. 1985.

History: En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

27-5-313. Modification or correction of award by court.

(1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:
   (a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
   (b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
   (c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs.

(1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

Cross-References
Statute of limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

27-5-324. Appeals.
(1) An appeal may be taken from:
   (a) an order denying an application to compel arbitration made under 27-5-115;
   (b) an order granting an application to stay arbitration made under 27-5-115(2);
   (c) an order confirming or denying confirmation of an award;
   (d) an order modifying or correcting an award;
   (e) an order vacating an award without directing a rehearing; or
   (f) a judgment entered pursuant to the provisions of this chapter.
(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

History: En. Sec. 21, Ch. 684, L. 1985.

Cross-References

Statute of limitations tolled by submission to arbitration, 27-2-405.

TITLE 49
HUMAN RIGHTS

CHAPTER 3
GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Part 2 — Duties of Governmental Agencies and Officials

Part 3 — Enforcement and Remedies

Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.
Variation of oath to suit witness's belief, 1-6-103.
Religious beliefs of witness not relevant to credibility, Rule 610, M.R.Ev. (see Title 26, ch. 10).
Marital status irrelevant to parent-child relationship, 40-6-103.
No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Part 1
General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) (a) "Physical or mental disability" means:
   (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
   (ii) a record of such an impairment; or
   (iii) a condition regarded as such an impairment.
   (b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:
   (a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or
   (b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) "Qualifications" means qualifications that are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991; amd. Sec. 11, Ch. 407, L. 1993.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References
Applicability to community college districts, 20-15-403.

49-3-103. Permitted distinctions.
(1) Nothing in this chapter prohibits any public employer:
   (a) from enforcing a differentiation based on marital status, age, or physical or mental disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;
   (b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;
   (c) from discharging or otherwise disciplining an individual for good cause; or
   (d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.
(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991; amd. Sec. 6, Ch. 13, L. 1993; amd. Sec. 12, Ch. 407, L. 1993.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. Sec. 4, Ch. 540, L. 1983.

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:
   (1) filing of complaints;

(2) conducting investigations of complaints;
(3) petitioning for a declaratory ruling; and
(4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

Part 2
Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.

(1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
(2) All state and local governmental agencies shall:
   (a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;
   (b) regularly review their personnel practices to assure compliance; and
   (c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.
(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.
(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.
(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.
Classified service employees — municipal commission-manager government, 7-3-4415.
Employment by county Board of Park Commissioners — discrimination prohibited, 7-16-2326.
Work-study program, 20-25-707.
Equal pay for women for equivalent service, 39-3-104.
Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.
Women in employment, Title 39, ch. 7.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Exemption from association with labor organization on religious grounds, 39-31-204.
Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.
Right to refuse to participate in abortion, 50-20-111.

49-3-202. Employment referrals and placement services.

(1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin must be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320; amd. Sec. 14, Ch. 407, L. 1993.

Cross-References

State employment service, 39-1-102, 39-51-307.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979; amd. Sec. 15, Ch. 407, L. 1993.

Cross-References

No aid to sectarian schools, Art. X, sec. 6, Mont. Const.
Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
Special education supervisor, 20-3-103.
Exemption from immunization requirements on medical or religious grounds, 20-5-405.
Special education for exceptional children, Title 20, ch. 7, part 4.
Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.
Charges for tuition — waivers, 20-25-421.
Exemption from barbering, cosmetology, electrology, esthetics, or manicuring examination and fees, 37-31-308.

49-3-204. Licensing.

(1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991; amd. Sec. 16, Ch. 407, L. 1993; amd. Sec. 235, Ch. 546, L. 1995.

Cross-References
Restrictions on licensing of former criminal offenders, 23-4-201, 23-5-176, 32-2-409, 37-1-201 through 37-1-205, 37-47-302, 37-47-341.
Professions and Occupations, Title 37.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Exemptions from licensure as physician — Christian Science practitioners and motels, 37-3-103.
Licensing and standards for spiritual healing institutions, 50-5-104.
Retention of special plates, 61-3-446.
Ineligibility of handicapped for driver's license, 61-5-105.
Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-3-205. Governmental services.

(1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party

to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991; amd. Sec. 17, Ch. 407, L. 1993.

Cross-References

Sex discrimination — records of military discharges, 7-4-2614.
Urban renewal — discrimination prohibited, 7-15-4207.
Use of hospital district facilities — discrimination prohibited, 7-34-2123.
Accessibility of polling places, Title 13, ch. 3, part 2.
Library services for handicapped, 22-1-103.
Health care facilities — discrimination prohibited, 50-5-105.
Exemption from prenatal blood tests on religious grounds, 50-19-109.
Furnishing of medical assistance — discrimination prohibited, 53-6-105.
Rights while in residential facility, 53-20-142.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324; amd. Sec. 18, Ch. 407, L. 1993.

Cross-References

Furnishing of medical assistance — discrimination prohibited, 53-6-105.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979; amd. Sec. 19, Ch. 407, L. 1993.

Cross-References
Urban renewal — discrimination prohibited, 7-15-4207.
Public Contracts, Title 18.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3
Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 5, Ch. 540, L. 1983; amd. Sec. 2, Ch. 415, L. 1987.

49-3-305. Repealed. *Sec. 18, Ch. 467, L. 1997.*

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 7, Ch. 540, L. 1983; amd. Sec. 8, Ch. 801, L. 1991.

49-3-307. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 9, Ch. 540, L. 1983.

49-3-309. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 10, Ch. 540, L. 1983.

49-3-310. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 11, Ch. 540, L. 1983.

49-3-311. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.

49-3-312. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. Sec. 13, Ch. 540, L. 1983; amd. Sec. 2, Ch. 511, L. 1987.

49-3-313 and 49-3-314 reserved.

49-3-315. Enforcement and remedies. The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

History: En. Sec. 16, Ch. 467, L. 1997.

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